



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Julian Montgomery
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. 0-1903

Re: Payment of membership fees out
of State Highway Fund to the
American Association of State
Highway Officials

We acknowledge receipt of your letter of January 26, 1940, requesting the opinion of this department on the above-captioned subject. The following paragraph is quoted from your letter:

"The membership of the American Association of State Highway Officials is composed of representatives of the Public Roads Administration and all of the Highway Departments of the States and Territories of the United States. The Association is recognized by the Public Roads Administration as the policy-forming organization in matters of administration, accounting, design, construction, materials, testing, maintenance, methods and procedures, and such policies and procedures as are set forth and adopted by the Association are incorporated in the standards, requirements and reports required by the Public Roads Administration of the State Highway Departments. The executive committee of the Association has full authority to review the United States numbered roads system and the numbering and marking thereof, and to make additions, changes, revisions, extensions, or reductions in said road system, and to revise the marking prescribed for such roads. All of the relations of this Department with the Public Roads Administration are vitally affected by the policies formulated by the Association and should this Department be deprived of its membership in such

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Association, it would have no voice in the preparation, approval, disapproval, adoption or non-adoption of such policies and procedures submitted to the Public Roads Administration for adoption as requirements and standards to be imposed upon all State Highway Departments. Nor would this Department have a voice in determining which highways of this State should be included in the United States roads system, or in the marking or method of marking of such roads. It is our opinion that these things are necessary and vital to the proper construction and maintenance of a correlated system of state highways and, as such, make the annual membership fees eligible for payment out of the State Highway Fund."

Our examination of the material submitted to us indicates that the paragraph above quoted concisely states the purposes and operation of the American Association of State Highway Officials. The desirability of maintaining membership in this association is obvious. In this connection, we quote the following excerpt from that portion of the appropriation bill for 1940 which applies to the Highway Department:

"Provided further, that all funds or balances of funds on hand September 1, 1939, and all funds coming into the State Highway Fund, and derived from registration fees or from other sources, after deducting the total of the specific appropriations herein made, are hereby appropriated to the State Highway Department for the establishment of a system of State highways and the construction and maintenance thereof, as contemplated and set forth in said Chapter 1, Title 116, and Chapter 186, General Laws of the Regular Session of the 39th Legislature, and amendments thereto..."

Article 6673 of Chapter 1, Title 116, Vernon's Annotated Civil Statutes of Texas, provides that the Highway Commission is to have control and is to maintain State Highways in Texas.

Article 6674 provides that the Legislature shall make appropriations for the maintenance and running expenses of the Department, shall fix the compensation and number of employees, and the compensation of the Commission, and states that "all money herein authorized to be appropriated

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for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided."

Article 6674q-4 reads as follows:

"All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said System shall be made, prepared and paid for by the State Highway Department. No further improvement of said System shall be made with the aid of or with any moneys furnished by the counties except the acquisition of rights of way which may be furnished by the counties, their subdivisions or defined road districts. But this shall in no wise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners Court of any county, for such county, or for any defined road district. In the development of the System of State Highways and the maintenance thereof, the State Highway Commission shall, from funds available to the State Highway Department, provide:

"(a) For the efficient maintenance of all highways comprising the State System.

"(b) For the construction, in cooperation with the Federal Government to the extent of Federal Aid to the State, of highways of durable type of the greatest public necessity.

"(c) For the construction of highways, perfecting and extending a correlated system of State Highways, independently from State Funds."

In Opinion No. 0-1318, to the Honorable Roy Loventhal, Chairman of the Livestock Sanitary Commission of Texas, this department held that the Livestock Sanitary Commission could not pay membership dues in the United States Livestock Sanitary Association from the funds allotted this Commission by the Legislature, since the Legislature had made no authorization for any such expenditure. We do not feel, however, that

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the same situation is presented by your opinion request. It is evident from the above-quoted language of the departmental appropriation bill that the State Highway Department has at its command all funds coming into the State Highway Fund after the deduction of specific appropriations for use in construction and maintenance of State highways, as provided by Chapter 1, Title 116, Vernon's Annotated Civil Statutes of Texas. The Articles quoted from this Chapter and Title state concisely and clearly the intention of the Legislature to place under the control of the Highway Department the control, maintenance and furtherance of the system of State highways in Texas.

Article 6674c-4, supra, unequivocally states that the State Highway Commission shall provide for the construction of highways of durable type in cooperation with the Federal Government to the extent of Federal Aid to the State. Further, Section 11 of Article 827a, Vernon's Annotated Penal Code of Texas, authorizes the Highway Department to classify, designate and mark intrastate and interstate highways, and to provide a system for marking and placing signs upon such highways, which correlates with the signing and marking of highways in other States.

Bearing in mind that the funds for the operations above discussed are made available to the State Highway Department by the departmental appropriation bill in the provision which we have quoted and previously referred to, it necessarily follows that the Highway Department is authorized to make an expenditure which is in furtherance of the purposes and aims reflected by the statutes contained in Chapter 1 of Title 116, Vernon's Annotated Civil Statutes.

It is the opinion of this department that membership in the American Association of State Highway Officials is in compliance with the spirit and letter of these statutes. The quoted portion of your letter of January 26th states a complete and logical basis for considering membership of the Texas Highway Department in this Association highly desirable, if not necessary. The object and aims of the association are in complete accord with the intention expressed by the Legislature.

We therefore advise you that it is the opinion of this department that the Texas Highway Department may maintain its membership in the American Association of State Highway Officials, and that membership fees are properly payable

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from the State Highway Fund appropriated by the Legislature
in the Departmental Appropriation Bill.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

Ross Carlton
Ross Carlton
Assistant

RC:pbp

APPROVED FEB 10, 1940

Gerardo C. Mann
ATTORNEY GENERAL OF TEXAS

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